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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 DARRYL WILLIAM YOUNG, )

11 Petitioner, )

12 v. )

13 UNITED STATES OF AMERICA, )

14 Respondent. )

CASE NO. C05-924RSM  
(CR99-210RSM)

ORDER DIRECTING PETITIONER TO  
SUBMIT ADDITIONAL BRIEFING

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16 Petitioner is a federal prisoner who is currently incarcerated at the Federal Correctional  
17 Institution at Sheridan, Oregon. He has presented to this Court for filing a document entitled "Petition  
18 for Writ of Habeas Corpus Under the 'All Writs Act'" in which he seeks to challenge the application  
19 of the "reckless endangerment" enhancement to his sentence. Petitioner contends that he is currently  
20 serving this unconstitutional 18 month enhancement and that he is therefore entitled to release from  
21 custody. In his statement of jurisdiction, petitioner cites to various statutory provisions which he  
22 asserts confer jurisdiction on this Court to consider his constitutional challenge to his current custody.  
23 It appears, however, that petitioner intends to proceed with this action under 28 U.S.C. § 2241.

24 Generally, challenges to the legality of a federal court sentence must be filed under 28 U.S.C. §

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1 2255. *See Hernandez v. Campbell*, 204 F.3d 861, 864 (9<sup>th</sup> Cir. 2000). A prisoner who is authorized  
2 to apply for relief by motion under § 2255 may not petition for habeas corpus relief under § 2241  
3 unless he can show that “the remedy by motion is inadequate or ineffective to test the legality of his  
4 detention.” 28 U.S.C. § 2255.

5         The first, and only, question for this Court to resolve is whether petitioner’s petition is  
6 properly construed as a petition for writ of habeas corpus under § 2241, as he apparently intends, or as  
7 a motion to vacate, set aside, or correct a sentence under § 2255. If petitioner establishes that his  
8 petition is properly construed as one filed under § 2241, this Court will recommend that this action be  
9 transferred to the District of Oregon because this Court lacks jurisdiction over petitioner’s custodian.  
10 *See Brown v. United States*, 610 F.2d 672, 677 (9<sup>th</sup> Cir. 1980)(citing *Braden v. 30th Judicial Circuit*  
11 *Court of Kentucky*, 410 U.S. 484 (1973)).

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13         If, on the other hand, this Court determines that the petition is properly construed as a motion  
14 under § 2255, this Court will recommend that this action be transferred to the Ninth Circuit Court of  
15 Appeals because petitioner has previously requested, and been denied, relief under § 2255 and is  
16 therefore precluded from bringing a motion under § 2255 in this Court unless he first obtains  
17 permission from the Ninth Circuit. *See* 28 U.S.C. §§ 2244(b) and 2255.

18         Based upon the foregoing, this Court does hereby ORDER as follows:

19         (1)       Within ***thirty (30) days*** of the date on which this Order is signed, petitioner shall clarify  
20 for the Court whether he intends to proceed with this action under § 2241 or § 2255. If petitioner  
21 advises the Court that he intends to proceed with this action under § 2241, he shall also provide  
22 supplemental briefing explaining why the remedy provided by § 2255 is “inadequate or ineffective.”  
23 Once the Court has an opportunity to review petitioner’s supplemental submissions, it will recommend  
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1 entry of an appropriate transfer order. Should petitioner fail to timely respond to this Order, this  
2 Court will recommend that this action be dismissed.

3 (2) Petitioner's motion for appointment of counsel (Dkt. No. 2) is DENIED. There is no  
4 right to have counsel appointed in cases brought under § 2241 unless an evidentiary hearing is  
5 required. *See Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952  
6 F.2d 1164, 1168 (9th Cir. 1992); and, *Phelps v. United States*, 15 F.3d 735, 737 (8th Cir. 1994). The  
7 Court may exercise its discretion to appoint counsel for a financially eligible individual where the  
8 "interests of justice so require." 18 U.S.C. § 3006A. However, petitioner fails to demonstrate that the  
9 interests of justice are best served by appointment of counsel especially where, as here, this action is  
10 unlikely to remain in this Court.

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12 (3) The Clerk shall send copies of this Order to petitioner and to the Honorable Ricardo S.  
13 Martinez.

14 DATED this 27th day of June, 2005.

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17 JAMES P. DONOHUE  
18 United States Magistrate Judge  
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SUBMIT ADDITIONAL BRIEFING - 3